



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

mous. MAY ON INSURANCE, § 249 A. These terms are to be construed with reference to the subject matter and the circumstances of each case. *Halpin v. Phenix Ins. Co.*, 118 N. Y. 165, 23 N. E. 482. Where policy reads "vacant or unoccupied," a breach of either condition is sufficient. *Limburg v. Ins. Co.*, 23 L. R. A. 99, 90 Ia. 709, 57 N. W. 626. There is an apparent conflict of authority as to the effect of a breach of such a condition. The court in the above case intimated that the breach rendered the policy absolutely void, and other cases have laid down the same rule. But this seems to arise from a carelessness in distinguishing between the words "void" and "voidable." Indeed many of these cases admit that the insurer may waive the breach, which would seem to show that in reality the courts considered the contract only voidable. Insurance policies are to be construed like other contracts, and the exceptions will be construed most strictly against the parties for whose benefit they are inserted. JOYCE ON INSURANCE, § 2190; *Carpenter v. Ins. Co.*, 16 Pet. 495. In all contracts where stipulations are for the sole benefit of one party, the word "void" is to be construed as "voidable." *Turner v. Meridan Ins. Co.*, 16 Fed. 454; *Baer v. Ins. Co.*, 4 Bush 242. A provision against vacancy is for benefit of insurer, and he may avoid the policy or waive its breach. *Germania F. Ins. Co. v. Klewer*, 129 Ill. 599, 22 N. E. 489; *Miner v. Ins. Co.*, 27 Wis. 693. Waiver may consist of any act by which consent of insurer may be inferred. *Shearman v. Ins. Co.*, 46 N. Y. 526, 7 Am. Rep. 380. Policy is only voidable at option of insurer. *Hunt v. State Ins. Co.* (1902), — Neb. —, 92 N. W. 921. Under this rule the case above would seem rightly decided, for the insurer had right to avoid policy on breach of the condition, and there was no evidence of knowledge of the breach or of a waiver by the insurer.

LANDLORD AND TENANT—FIXTURES—RIGHT TO REMOVE UNDER A SECOND LEASE.—A tenant erected trade fixtures on the leased premises. On the expiration of the first lease, a second was executed, containing no reference to the prior lease, or to the fixtures, and no reservation of the right to remove the latter. In an action for wrongful eviction, *Held*, that the paragraph claiming recovery of the value of the fixtures was properly stricken out. *Spencer v. Commercial Co.* (1902), — Wash. —, 71 Pac. Rep. 53.

The rule laid down by the court, that "where the tenant enters into a new lease, making no mention of a former lease or tenancy, and with no reservation for removal of fixtures placed under the former lease, his right to remove the fixtures is thereby precluded," is in accord with the weight of authority. 2 TAYLOR LAND. AND TEN., 8th ed., sec. 552; GEAR, LAND AND. TEN., sec. 116; REDMAN & LYONS, LAND. AND TEN. 297; TYLER ON FIXTURES, 436; 13 ENG. & AM. ENC. LAW (2nd ed.) 651; 5 ENC. LAWS OF ENG. 381; *Loughran v. Ross* (1871), 45 N. Y. 792, 6 Am. R. 173; *Talbot v. Cruger* (1896), 151 N. Y. 117, 45 N. E. 364; *Watriss v. Bank* (1878), 124 Mass. 571, 26 Am. R. 694; *Marks v. Ryan* (1883), 63 Cal. 107; *Hedderich v. Smith* (1885), 103 Ind. 203, 53 Am. R. 509, 1 N. E. 47; *Carlin v. Ritter* (1888) 68 Md. 478, 13 At. 370, 6 Am. S. R. 467; *Bauern-Schmidt Brewing Co. v. McColgan* (1899), 89 Md. 135, 42 At. 907; *Sanitary District v. Cook* (1897), 169 Ill. 184, 61 Am. S. R. 161, 39 L. R. A. 369, 48 N. E. 461; *Fitzherbert v. Shaw* (1789), 1 H. Blackstone 258; *Thresher v. Water Works* (1824), 2 B. & C. 608, 9 E. C. L. 267. The reason advanced for the rule is that the acceptance of the lease, without any reservation of the fixtures, and an occupation thereunder, are equivalent to a surrender at the expiration of the first term, and that the tenant by accepting the second lease, without excepting the fixtures, takes a lease of the land with them, and having thereby impliedly acknowledged his landlord's title, is estopped from denying it. The rule, however, is open to

strong criticism. As one court says "so long as the tenant has the right of removal, the fixtures are his, and to assume that in leasing the land upon which they are placed, he leases them of his landlord, is to assume that he intends to lease his own property." *Wright v. Macdonnell* (1895), 88 Tex. 140, 30 S. W. 907. The Michigan court, in an able opinion by Judge Cooley, dissented from the above rule, in *Kerr v. Kingsbury* (1878), 39 Mich. 150, 33 Am. R. 362, followed in *National Bank v. Merrill Co.* (1887), 69 Wis. 501, 34 N. W. 514. And the rule does not apply where a tenant remains in possession without a new lease, by consent of the landlord, or under such circumstances as to imply an extension of the first lease. 13 AM. & ENG. ENC. LAW (2nd ed.) 651 and cases; TAYLOR, LAND. & TEN. sec. 552.

LANDLORD AND TENANT—LEASE—EXECUTION BY PARTY NOT NAMED IN DEED.—A tenant by courtesy executed an oil and gas lease. The lessee on learning that the lessor had only the life interest, had the heirs sign and acknowledge the deed. The latter were nowhere named therein as lessors. Subsequently leases of the same tracts were executed to other parties. A bill was brought by the first lessees to restrain interference. *Held*, that the injunction would not issue. *Barnesdale v. Boley* (1902), 119 Fed. Rep. 191.

As to the tenant by courtesy, the court held the taking of the oil and gas to constitute waste, and therefore to be beyond his power. *Williamson v. Jones* (1897), 43 W. Va. 562, 27 S. E. 411, 38 L. R. A. 694, 64 Am. St. Rep. 891. And as to the heirs, the deed was held a nullity, the court, relying upon *Adams v. Medsker* (1884), 25 W. Va. 127, holding that the mere signing and acknowledging of a deed, when there are grantors named in it, is insufficient to make a person so signing it, who is not named therein as grantor, a party to the deed. The rule laid down is in accord with the weight of authority. *Batchelor v. Brereton* (1884), 112 U. S. 396, 28 L. ed. 748, 5 Sup. Ct., Rep. 180; *Bell v. Adams, Adm'r* (1812), 3 Munf. (Va.) 118; *Stone v. Sledge* (1894), 87 Tex. 49, 26 S. W. 1068, 47 Am. St. Rep. 65; *King v. Rhew* (1891), 108 N. C. 696, 13 S. E. 174, 23 Am. St. Rep. 76; *Davidson v. Iron Co.* (1895), 109 Ala. 383, 19 So. Rep. 390; *Bradley v. Ry. Co.* (1887), 91 Mo. 493, 4 S. W. 427; *Purcell v. Goshorn* (1848) 17 Oh. 105, 49 Am. D. 448; *Peabody v. Hewett* (1861), 52 Me. 33, 83 Am. D. 486; *Pierce v. Chace* (1871), 108 Mass. 254. The contrary rule is announced in *Hrouska v. Janke* (1886), 66 Wis. 252, 28 N. W. 166, citing as authority therefor, WASHBURN REAL PROPERTY, (16th ed.) Vol. 3, sec. 2120. The same rule is laid down in 2 BOONE REAL PROPERTY, (2nd ed.) sec. 290. None of the cases cited by either writer, however, are authorities for such a broad rule. With a single exception all are cases where the wife signed a conveyance of her husband's property and was held to have barred her dower, or where, in jurisdictions where the husband's consent to a conveyance of the wife's property is required, his joining in the execution of her deed, was held to be a sufficient evidence of such consent. For such purposes such signing, sealing and acknowledging are generally held sufficient. *Thompson v. Lovrein* (1876), 82 Pa. S. 432; *Dentzel v. Waldie* (1866), 30 Cal. 139; *Clark v. Clark* (1888), 16 Ore. 224, 18 Pac. 1; *Schley v. Pullman Co.* (1885), 25 Fed. Rep. 890; *Evans v. Summerlin* (1883), 19 Fla. 858; *Stone v. Montgomery* (1858), 35 Miss. 83. Contra, *Catlin v. Ware* (1812), 9 Mass. 218, 6 Am. D. 56; *Adonis v. Teagne* (1899), 123 Ala. 591, 82 Am. St. Rep. 144, 26 So. Rep. 221.

LIMITATION OF ACTIONS—NUISANCE.—A city constructed a town hall, bell-tower, coal-house and jail in a street abutting plaintiff's property. In an action for damages resulting from the nuisance, *Held*, that although five years had elapsed, the action was not barred by the statute of limitations.